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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,445	08/05/2003	Betty Birnbaum	1067-001	8287

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EXAMINER
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GUIDOTTI, LAURA C

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/634,445

Applicant(s)

BIRNBAUM, BETTY

Examiner

Laura C. Guidotti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 6-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Figures 1-6 in the reply filed on 13 October 2005 is acknowledged. In the Applicant's election, the Applicant has stated that Claims 1-7 are readable upon Figures 1-6. However, after further consideration, it appears that Claim 6 *is not* readable upon Figures 1-6, therefore Claims 6-7 are withdrawn from consideration as being directed to a non-elected invention.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "124" (Figures 7-8). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Houghton, USPN 614,810.

Houghton discloses the claimed invention including a flexible member (A, B, C; Lines 21-27) formed with a plurality of undulations (D and D') and a plurality of edges defined by the shape of the member and the curvature of the undulations (edges F and G; and side edges of A, B, C; see Figures).

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Peterson, USPN 3,256,548 (herein Peterson '548).

Peterson '548 discloses the claimed invention including a flexible member (12; Column 1 Lines 59-63) formed with a plurality of undulations (26, 28, 30; Column 1 Line 65 to Column 2 Line 4) and a plurality of edges defined by the shape of the member and the curvature of the undulations (36, 22, 24, other unlabeled edge; see Figures). It is noted that there is a straight edge parallel to the undulations (36), a fingernail edge intersecting the straight edge having an S-shape and sinuous curvature (22), a rounded edge parallel to the undulations disposed on a side opposite the straight edge

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(unlabeled edge, topmost edge as shown in Figure 2), and a further edge having a sinuous curvature disposed on a side of the member opposite the fingernail edge (24).

5. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Kelsey et al., US 2003/0200619.

Kelsey et al. disclose the claimed invention including a flexible member (4; Paragraph 33) formed with a plurality of undulations (at the portion where each ridge "22" and "24" are located; see Figures) and a plurality of edges defined by the shape of the member and the curvature of the undulations (12; and side edges of 4; see Figures).

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Peterson, USPN 3,178,747 (herein Peterson '747).

Peterson '747 discloses the claimed invention including a flexible member (2; Column 1 Line 52 to Column 2 Line 3) formed with a plurality of undulations (20, 22, 24; Column 2 Lines 14-16) and a plurality of edges defined by the shape of the member and the curvature of the undulations (4, 6, 8, 10).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson, USPN 3,178,747 (Peterson '747) as applied to Claim 1 in view of Killins, USPN D402,514.

Peterson '747 discloses all elements above, however the plurality of edges (4, 6, 8, and 10) do not include a rounded edge or edges having sinuous curvature. It is noted that Peterson '747 further includes a lip (the "lip" edge is at "6" facing downwardly as shown in Figure 3).

Killins discloses a cleaning tool that is for universal radius forming and cleaning (see Title). The cleaning tool of Killins includes a straight edge (see bottommost edge as shown in Figure 3), a fingernail edge intersecting the straight edge having an S-shape and sinuous curvature (see rightmost edge as shown in Figure 3), a rounded edge disposed on a side of the member opposite the straight edge (see uppermost edge as shown in Figure 3), and a further edge having a sinuous curvature disposed on a side member opposite the fingernail edge (see leftmost edge as shown in Figure 3), wherein a sharp tip is formed at the intersection of the straight edge and the fingernail edge (see corner formed on rightmost edge as shown in Figure 3).

It would have been obvious for one of ordinary skill in the art to modify the generally straight edges of Peterson '747 for the varying edges that Killins teaches, so

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that a user may be capable of cleaning or scraping objects having various curvatures or radii.

8. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Killins, USPN D402,514 in view of Peterson, USPN 3,178,747 (Peterson '747).

Killins and Peterson '747 disclose all elements above. Killins however does not disclose that the tool is flexible or that it is formed with a plurality of undulations. Peterson '747 further discloses that the device "2" is flexible and has an improved gripping manner so that the user is able to position the scraper more effectively against a device being cleaned (Column 1 Lines 27-33, Column 2 Lines 16-18).

It would have been obvious for one of ordinary skill in the art to modify the cleaning tool body of Killins to be made of a flexible material having undulations, as Peterson '747 teaches, so that a user can grip and position the cleaning scraper more effectively against a surface that is to be cleaned.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Killins, USPN D402,514 and Peterson, USPN 3,178,747 (Peterson '747) as applied to Claim 3, in view of Sheridan, USPN 1,538,521.

Killins and Peterson '747 disclose all elements above, however do not include a lower surface having a roughened region disposed along an undulation. The device of Peterson '747 includes an upper and a lower surface (see uppermost and lowermost portions as displayed in Figure 2).

Sheridan teaches a scraper for cooking utensils that has an undulation (formed at portion "11") and an upper surface and lower surface (see uppermost and lowermost

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surfaces as shown in Figures 2-3), wherein the lower surface has a roughened region disposed along an undulation (12; Page 1 Lines 73-74) so that the device can be held by a user more steadily (Page 1 Lines 77-81).

It would have been obvious for one of ordinary skill in the art to modify an undulation of the device of Killins and Peterson '747 to include a roughened region, as Sheridan teaches, so that a user may hold the cleaning device more steadily.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Killins, USPN D402,514, Peterson, USPN 3,178,747 (Peterson '747), and Sheridan, USPN 1,538,521 as applied to Claim 4, in view of Houghton, USPN 614,810.

Killins, Peterson '747, and Sheridan disclose all elements above, however do not disclose a rounded edge that is sharpened.

Houghton also discloses all elements above, including side edges that are sharpened (Figure 3; Page 1 Lines 42-44). Figures 2-3 of Houghton display that all of the edges are sharpened (except portions which are toothed).

It would have been obvious for one of ordinary skill in the art to modify the rounded edge of the device of Killins, Peterson '747, and Sheridan to be sharpened, as Houghton teaches, in order to scrape and remove debris from surfaces.

### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Guidotti whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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